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February 16, 2024

Hon. William C. Smith, Jr., Chair
Hon. Jeff Waldstreicher, Vice Chair
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

**Submitted via online portal*

RE: National Women’s Law Center’s Support of SB 590/HB 1397, Equal Opportunity for All Marylanders Act

Dear Chairperson Smith and members of the Senate Judicial Proceedings Committee:

The National Women’s Law Center (NWLC)¹ writes to support Maryland Senate Bill 590 (“SB 590”) and House Bill 1397 (“HB 1397”), which will provide important clarity and consistency across all aspects of Maryland law, ensuring Marylanders have robust protection from discrimination in all aspects of life. NWLC supports strong antidiscrimination laws as a key tool in the fight for gender justice. By ensuring clarity and uniformity in nondiscrimination protections across the Maryland Code, SB 590 will ensure key institutions of public life are equally accessible to all marginalized populations, including women, people of color, and LGBTQI+ people.

Robust nondiscrimination laws are fundamental to combating the profound political, social, economic, and dignitary harms of sex discrimination. Women have long been excluded from core institutions and denied opportunities—especially LGBTQI+ women and women of color. *All* women and girls are safer and freer when they can learn, work, travel, and vote without facing bias, harassment, and discrimination.

The General Assembly Should Act to Remedy Perceived Gaps in Civil Rights Law Following the Maryland Supreme Court’s Harmful Decision in *John Doe v. CRS*

The Maryland Supreme Court wrongly decided *John Doe v. Catholic Relief Services*, when it interpreted the nondiscrimination provisions of the Maryland Fair Employment Practices

¹ NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially those who face multiple forms of discrimination, including women of color, LGBTQI+ people, and low-income women and families. We believe that ending all forms of sex-based discrimination and harassment is crucial to protecting the opportunities of all women and girls.

Act (“MFEPA”) and the Maryland Equal Pay for Equal Work Act (“MEPEWA”).² Among other things, the Court erroneously held:

- (a) Because the MEPEWA enumerated sex and gender identity as protected grounds, the Maryland General Assembly therefore intended to *omit* protection against sexual orientation discrimination, and MEPEWA’s ban on sex discrimination does not cover sexual orientation discrimination.
- (b) Because the MFEPA provides protection for covered employees against discrimination based on sex, sexual orientation, and gender identity, a Maryland law protection against sex discrimination does *not* imply protection against discrimination based on sexual orientation or based on transgender status/gender identity.

This regressive decision presents a significant risk of harm to all communities that experience sex discrimination: women and girls, LGBTQI+ people, everyone who is pregnant and parenting, and all individuals who do not conform to narrow sex stereotypes. Among existing Maryland statutes, there is no consistency in the language enumerating protected classes of people. Under the logic of *CRS*, Marylanders may be legally subjected to discrimination in one area of their life while the *same* discrimination is prohibited in another area of life.

The patchwork of protections left after this decision means Maryland law is less protective than federal law. In 2020, the Supreme Court held that Title VII’s prohibition on sex discrimination protects LGBTQI+ workers, because there is no way to discriminate against LGBTQI+ individuals without also engaging in sex discrimination.³ The Maryland General Assembly must take this moment to ensure Maryland law provides equal or greater recourse to individuals who experience any form of sex discrimination—whether that discrimination is based on sexual orientation or gender identity.

Maryland has a strong and compelling interest in preventing discrimination based on protected characteristics, including sex and LGBTQI+ status. The misguided Maryland Supreme Court decision, effectively unraveling and weakening protections against sex discrimination in many parts of the Maryland Code, cannot be allowed to continue in effect. Enacting SB 590/HB 1397 will add necessary clarity and consistency to antidiscrimination statutes, and communicate clearly that Maryland law offers no license to discriminate.

Marylanders Need Legal Remedies Against All Types of Sex Discrimination in All Aspects of Life

Women, especially LGBTQI+ women and women of color, have suffered from longstanding discrimination in all aspects of public life, from school and work to healthcare, transportation, public office, and far more. For generations, states such as Maryland were

² *Doe v. Catholic Relief Servs.*, 484 Md. 640 (Aug. 2023).

³ *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020).

authorized to “withhold from women opportunities accorded to men” for any reason at all.⁴ Maryland and other states treated a married man and woman as “a single, male-dominated legal entity.”⁵ Political, economic, and dignitary inequality for women was enforced by federal and state courts—for example, when the U.S. Supreme Court sanctioned laws that restricted work hours for women based on the stereotype that women are naturally unsuited for independence, saying “woman has always been dependent upon man... [and] is not an equal competitor with her brother.”⁶

Sex discrimination continues to harm Maryland residents today. In the workplace, 40% of women report having experienced at least one form sex discrimination.⁷ In the Fourth Circuit, which governs Maryland, NWLC recently supported a successful challenge to a school policy requiring girls to wear skirts based on the sexist stereotype that girls are “‘fragile vessels’ deserving of ‘gentle’ treatment by boys.”⁸ Queer and transgender women, as well as women of color, are additionally vulnerable due to intersecting forms of oppression. For example, research shows that most LGBTQ students are not safe in Maryland high schools—in 2021, 53% of LGBTQ high schoolers in Maryland reported being harassed or assaulted at school based on sexual orientation, 50% for their gender expression, and 47% for their gender.⁹ Across all Maryland law enforcement agencies reporting hate crime statistics, hate crimes have steadily risen from 2020-2022, with dramatic increases in anti-LGBTQI+ hate crimes, and racist hate crime reports more than tripling.¹⁰ Strong antidiscrimination laws are essential to mitigate the harms of ongoing discrimination and protect women, people of color, and LGBTQI+ individuals’ access to education, housing, employment, and other core aspects of the public sphere.

Conclusion

The National Women’s Law Center supports strong antidiscrimination laws to ensure full and equal inclusion of women, girls, people of color, and all LGBTQI+ people in all aspects of public life. For the reasons above, we urge this committee to favorably report the Equal Opportunity for All Marylanders Act.

⁴ *US v. Virginia*, 518 U.S. 515, 531 (1996).

⁵ *Obergefell v. Hodges*, 576 U.S. 644, 660 (2015).

⁶ *Muller v. Oregon*, 208 U.S. 412, 421-22 (1908).

⁷ Paychex, *Employment and Discrimination: Exploring the Climate of Workplace Discrimination from 1997 to 2018* (Aug. 1, 2019), <https://bit.ly/3QxmwOW>.

⁸ *Peltier v. Charter Day Sch.*, 37 F.4th 104, 112 (4th Cir. 2022); *see also* “Challenge to ‘Skirts-Required’ Dress Code Policy,” NWLC, Jul. 13, 2020, available at <https://nwlc.org/resource/challenge-to-skirts-required-dress-code-policy-peltier-et-al-v-charter-day-school-inc-et-al/>.

⁹ “School Climate for LGBTQ+ Students in Maryland,” GLSEN 2021 National School Climate Survey State Snapshot, Feb. 2023 available at <https://maps.glsen.org/state-research-snapshots/>.

¹⁰ U.S. Dept. of Justice, 2022 Hate Crime Statistics for Maryland, last visited Feb. 15, 2024, available at <https://www.justice.gov/hatecrimes/state-data/maryland#stats-md>.

Please reach out to Anya Marino, Director for LGBTQI+ Equality, and Auden Perino Senior Counsel at the National Women's Law Center (amarino@nwlc.org; aperino@nwlc.org), if you have questions.

Thank you,

National Women's Law Center